

BOARD OF ZONING APPEALS

MINUTES July 19, 2018

The City of Knoxville **Board of Zoning Appeals** considered the following petitions for variance of requirements of the Knoxville City Code, Appendix B, Zoning Regulations at their July 19, 2018, meeting at 4:00 pm in the Main Assembly Room, City County Building, 400 Main St, Knoxville, TN.

This meeting and all communications between the Board members is subject to the provisions of the Tennessee Open Meetings Act, Tenn. Code. Ann. § 9-44-101, et seq.

CALL TO ORDER

Board Chairman Kristin Grove called the meeting to order at 4:03p.m.

ROLL CALL

Board members present were David Dupree, Kristin Grove, Don Horton, Daniel Odle and Charlie Van Beke.

Other in attendance were Peter Ahrens, Building Official; Crista Cuccaro, Staff Attorney; Joshua Frerichs, Stormwater Engineering, Mike Brusseau, MPC Senior Planner and Juliana LeClair, Board Secretary.

MINUTES

Member Charlie Van Beke made a motion to approve the June 21, 2018 minutes. It was seconded by member Daniel Odle. The Board voted 5-0 to **APPROVE**.

OLD BUSINESS

File: 5-J-18-VA **Parcel ID:** 094JH025
Applicant: Jim Stratton 6th Council District
Address: 1931 Middlebrook Pike
Zoning: I-2/C-3 (Restricted Manufacturing & Warehousing / General Commercial) District

Variance Request:

Reduce the minimum required setback for open storage of material from 25 ft to 10 ft (Article 4, Section 2.2.6.E.1 and Article 4, Section 2.2.6.B.21)

As per plan submitted proposing a new open storage area in I-2/C-3 Districts.

Postponement to August 16th meeting was requested prior to July meeting.

File: 6-H-18-VA

Parcel ID: 120IA013

Applicant: Land Development Solutions

2nd Council District

Address: 8529 Kingston Pike

Zoning: C-4 (Highway & Arterial Commercial (District))

Variance Requests:

- 1) Decrease the front yard setback from Kingston Pike from 50' to 25'
(Article 4, Section 2.2.7.E.2.a)
- 2) Decrease front yard setback from Walker Springs Rd. from 50' to 25'
(Article 4, Section 2.2.7.E.2.a)

As per plan submitted proposing to construct a new car wash in the C-4 (Highway & Arterial Commercial) District.

Scott Elder advised this is the former Shoney's building that recently closed. Prior to the meeting information was received that there may be a rezoning application, and if that is true and the zone has changed then there may be different set back requirements.

Applicant Rusty Baksa was present. This variance went before the board last month and was postponed because of the proposed Kingston Pike entrance. Since then the applicant worked with TDOT and The City and determined that the entrance wouldn't be safe so the entrance was moved to Walker Springs. Variances were requested for vacuum station equipment and pay canopy which was moved to cover the equipment. Member Charlie Van Beke clarified that the building to be built would not be affected by requested variances. Since that was the case member Charlie Van Beke made a motion to approve. It was seconded by member David Dupree. The Board voted 5-0 to **APPROVE**.

NEW BUSINESS

Request was made to move agenda item **7-M-18-VA** up in order to postpone to August meeting. Member Kristin Grove made a motion to postpone to the August meeting. It was seconded by member David Dupree. The Board voted 5-0 to **POSTPONE**.

File: 6-J-18-VA

Parcel ID: 095HC00801

Applicant: Michael Brady, Inc.

6th Council District

Address: 901 E. Summit Hill Drive

Zoning: C-3 (General Commercial) District

Variance Request:

Increase the allowable curb cut width for the Patton St driveway from 60 feet to 108.81 feet (Article V Section 7.H.3.c Table 7).

As per plan submitted proposing to construct a new data center in the C-3 (General Commercial) District.

Scott Elder advised the project was before the board last month. Variance was published incorrectly in the Public Notice, re-published correctly to be heard in July meeting.

Applicant Alicia McAuley was present. Request was in relation to current access adjacent to Patton St. Because it was an existing drive the request was to leave it as is.

Member Charlie Van Beke made a motion to approve. It was seconded by member Don Horton. The board voted 5-0 to **APPROVE**.

File: 7-A-18-VA
Applicant: Anthony Stubbs
Address: 7901 Livingston Dr.
Zoning: R-1 (Low Density Residential) District

Parcel ID: 120JC008
2nd Council District

Variance Requests:

- 1) Increase the height of a detached accessory structure from 15' to 16'-4"
(Article 4, Section 2.1.1.F.)
- 2) Increase the maximum building coverage for a single use accessory structure as a use on review from 1100 sq ft to 1320 sq ft (Article 5, Section 4.C.Table)

As per plan submitted proposing an installation of a detached garage in the R-1 (Low Density Residential) District.

Application was withdrawn.

File: 7-B-18-VA
Applicant: George E. McAlister
Address: 1107 Phillips Ave.
Zoning: F-1 (Floodway) District and the SW-4 (South Waterfront) District

Parcel ID: 095OB012
1st Council District

Variance Request:

Reduce the minimum floor elevation from 830 to 823.6 (Chapter 12.Article III, Section 12-52.2)

As per plan submitted proposing renovations to upgrade facility for outdoor retail sales and rental in the F-1 (Floodway) District and the SW-4 (South Waterfront) District.

Scott Elder advised variance request was from the floodway code not the zoning ordinance. Board is authorized to hear floodway code variance requests as well. Joshua Frerichs advised request was to reduce the minimum base floor elevation of the building from 1 ft. above 500 year flood plan to 1 ft. above the 100 year which is where it was built. Since the property is on the Tennessee River which is controlled by the TVA, staff felt there was not much chance of flooding.

Applicant Harold Cannon was present and brought attention to a correction on the first page of the application. The actual 500 yr. flood elevation is 829. 100 yr. flood elevation is 822.6. Staff advised that the final application had previously been corrected to reflect 829 and 822.6. Building was constructed when requirements followed the 100 yr. flood elevation. Survey was submitted which showed finished floor throughout the building was well above 1ft. above the 100 yr. flood, property is directly on the Tennessee River, controlled by the TVA and is more of a retail facility not residential.

Applicant representative Arthur Seymour was present. Mr. Seymour advised FEMA maps were re-done in October, 2013. FEMA now sets the limit for the 500 yr. flood rather than 100yr. flood to maintain insurance. This is an existing building and the footprint would not be changed. If stayed with the 500 yr. it would make the facility unusable. The benefit of the variance would allow the building to be useable and would allow continued redevelopment along the corridor.

Based on the existing condition and comments heard from city engineering, member Kristin Grove made a motion to approve. It was seconded by member Don Horton. The board voted 5-0 to **APPROVE**.

File: 7-C-18-VA
Applicant: Mary Phillips
Address: 424 Kituwah Trail
Zoning: R-1 (Low Density Residential) District

Parcel ID: 108IG006
2nd Council District

Variance Request:

Reduce the front yard setback in an R-1 zone from 25' to 12' (Article 4, Section 2.1.1.E.1.a.)

As per plan submitted proposing construction of a new house in the R-1 (Low Density Residential) District.

Member Charlie Van Beke advised of a phone call that he received the night before from John Reynolds who identified himself as an adjoining owner who advised he was unaware of the variance request until the day before. Disclosure noted by member Kristin Grove.

Applicant Mary Phillips was present. Small, irregular shaped lot, surrounded by three back yards with 10 ft. utility easement along one side and along the back. Plans reflect the furthest

back that the house could be pushed without going into the utility easements and to provide access to the garage.

Sandy Gillespie representing the Kingston Pike Sequoyah Hills Association was present to speak in opposition of the variance request. The association zoning committee had concerns about the approval of the variance request setting a precedent that would allow a 50% reduction in the front set back requirement of 25 ft. for a house. Recognized that topography is a valid concern, however almost all of the current houses on Kituwah have a slope issue without requesting a variance.

Neighbor Renie Tinsley Caroll was present to speak in opposition of the variance request. Concerned that the variance approval could have a negative effect on the property value of their home.

Neighbor Charles Richardson was present to speak in opposition of the variance request. Mr. Richardson advised the proposed garage would be four paces from his property and essentially in his backyard. Suggested reviewing other options and changing the proposed plans rather than asking for the variance.

Member Kristin Grove advised that three opposing statements had been heard and the applicant was then allowed a rebuttal. Member David Dupree made a motion to allow a 4th rebuttal. It was seconded by member Charlie Van Beke. The board voted 5-0 to allow a 4th rebuttal.

Neighbor John Reynolds was present to speak in opposition of the variance and questioned proposed setbacks. Frontage of applicant property sits on his property.

Applicant Mary Phillips made rebuttal statement that proposed easement was needed to provide access to the garage.

Member Daniel Odle stated he did not see enough evidence to get behind variance request. Member David Dupree asked applicant if she had consulted an architect to reduce the size of the house. Applicant advised she had reviewed a number of house plans. Member Charlie Van Beke asked if notification of variance request was given to neighbors. Applicant advised the public notice sign was posted, flyers were posted on the property and letters were sent to all residents on Kituwah Trail.

Member Kristin Grove asked if applicant was interested in postponing the request in order to have discussions with neighbors and return at a later date. Applicant advised she wished to move forward with board decision. Member Don Horton made a motion to reject the request on the grounds that there were options for fitting a house of that size on the property and that most of the concerns could be satisfied with some exploration. It was seconded by member David Dupree. The Board voted 5-0 to **DENY**.

File: 7-D-18-VA
Applicant: Damon Falconnier
Address: 925 W. Baxter Ave.
Zoning: R-1A (Low Density Residential) District

Parcel ID: 094CS01001
6th Council District

Variance Request:

Reduce the required rear yard setback from 25 ft to 13 ft 4 in (Article IV Section 2.1.2.D.3.a)

As per plan submitted showing construction of a new one story building in the R-1A (Low Density Residential) District.

Scott Elder advised the property was an existing church that was expanding the ministry and adding another building. There was a Use on Review that had been approved pending the outcome of the variance request.

Graham Fox, applicant representative, was present. Building on side of property line would be taken out and a new building put in. Request was to align back of new building with back wall of existing building. The new building would match the construction of the existing building via a concrete wall. Member Charlie Van Beke made a motion to approve. It was seconded by member Daniel Odle. The Board voted 5-0 to **APPROVE**.

File: 7-E-18-VA
Applicant: Knoxville Preservation & Development, LLC
Address: 108 W. Oklahoma Ave.
Zoning: C-2 (Central Business) District

Parcel ID: 081NH00801
4th Council District

Variance Requests:

- 1) Decrease front yard setback of restaurant building on Central St. from 5' to 1' (Article 4, Section 2.2.5.E.1)
- 2) Decrease front yard setback of banquet hall on Central St. from 5' to 1'-10" (Article 4, Section 2.2.5.E.1)
- 3) Decrease required corner clearance from 100' to 46'-7" (Article 5, Section 7.H.2.a.Table 5)

As per plan submitted for mixed-use development and platting of property in the C-2 (Central Business) District.

Applicant Daniel Schuh was present. The first two variance requests were for the existing building setbacks, the third variance request was for the corner clearance on the existing parking lot, the entrance would be realigned over to a side street. Member Daniel Odle made a motion to approve. It was seconded by member Charlie Van Beke. The Board voted 5-0 to **APPROVE**.

File: 7-F-18-VA
Applicant: Creative Structures
Address: 2012 N. Broadway
Zoning: C-3 (General Commercial) District

Parcel ID: 082HA021
4th Council District

Variance Requests:

- 1) Reduce the minimum drive aisle width from 26 feet to 24 feet (Article V Section 7.E.1.d.Table 3)
- 2) Reduce the minimum parking space depth for 90 degree parking spaces from 17.5 feet to 15 feet (Article V section 7.E.1.d.Table 3) and 3) Reduce the required number of parking spaces from 35 to 17 (Prior Ordinance – Article V Section 7.A.3.a Table)

As per plan submitted proposing construction of a new multi-tenant building in the C-3 (General Commercial) District.

Applicant Tyler Slack was present. The City previously reviewed plan and had concerns with trucks entering and exiting the entrance on Cecil. TDOT variance was requested and denied. Applicant worked with engineering firm to come up with new plan which was approved by property owner at the time. Owner then expressed a desire to see a different plan than what was before the board.

Eddie Mubarick, representative for property owner and tenants, was present. If parking were to be designated on the street side of the property then the delivery trucks would be blocking the store fronts. With an island present at the entrance it would be impossible for trucks to turn in. Delivery drivers advised they would be forced to park on Broadway with cones which would block Broadway traffic for 30 minutes at a time. Truck corners hitting store signage would also be an issue. Member Kristin Grove made a motion to postpone to the August meeting. It was seconded by member Don Horton. The board voted 5-0 to **POSTPONE**.

File: 7-G-18-VA
Applicant: Central United Methodist Church
Address: 201 E. Third Ave.
Zoning: R-1A (Low Density Residential), the H-1 (Historic Overlay) District and the C-3 (General Commercial) Districts

Parcel ID: 094DL00801
4th Council District

Variance Requests:

Reduce the number of required parking spaces from 300 spaces to 21 spaces (Article 5, Section 7.D.1.Table 1)

As per plan submitted proposing replacement of a portion of the existing lot with landscaped green space in the R-1A (Low Density Residential), the H-1 (Historic Overlay) District and the C-3 (General Commercial) Districts.

Bob Whetsel the applicant was present. Request was to remove 8 parking spots from what already existed. Church was built in 1927 with no parking spots at all. Church developed plans to redo the entire rear parking lot which had a long existing sinkhole on the left side. Rather than incurring the cost of repairing the sinkhole the congregation voted to go back to green space which required compliance with modern parking requirements in order

to obtain a permit, hence the variance request. Member Kristin Grove made a motion to approve. It was seconded by member Don Horton. The Board voted 5-0 to **APPROVE**.

File: 7-H-18-VA
Applicant: Ryan Estabrooks
Address: 3501 Middlebrook Pike
Zoning: I-3 (General Industrial) District

Parcel ID: 093LG023
3rd Council District

Variance Request:

Increase the required maximum grade in a parking lot from 10% to 16% (Article V Section 7.G.2)

As per plan submitted for the extension of an existing parking lot in the I-3 (General Industrial) District.

Applicant Ryan Estabrooks was present. Pepsi Distribution center hired several new employees now need to extend the existing parking lot which is already at 16% grade, adding approximately 10 additional parking spaces on Middlebrook side. Member Charlie Van Beke made a motion to approve. It was seconded by member David Dupree. The board voted 5-0 to **APPROVE**.

File: 7-I-18-VA
Applicant: Arthur Seymour
Address: 619 Women's Basketball Hall of Fame Dr.
Zoning: O-1 (Office, Medical and Related Services) District

Parcel ID: 095IH00101
6th Council District

Variance Requests:

- 1) Decrease the front yard setback off Women's Basketball Hall of Fame Drive from 25' to 10' (Article 4, Section 2.2.1.D.)
- 2) Decrease the front yard setback off James White Parkway from 25' to 14'-1" (Article 4, Section 2.2.1.D.1)
- 3) Decrease the east side yard setback from 15' to 5' (Article 4, Section 2.2.1.D.2)
- 4) Increase maximum lot coverage from 35% to 52% (Article 4, Section 2.2.1.D.5.b)

As per plan submitted proposing construction of a new indoor storage facility in the O-1 (Office, Medical and Related Services) District.

Member Kristin Grove advised the variance request had been postponed to the August meeting.

File: 7-J-18-VA
Applicant: William Andrews Architects
Address: 4033 Sequoyah Ave.
Zoning: R-1 (Low Density Residential) District

Parcel ID: 121DG009
2nd Council District

Variance Request:

Increase lot coverage from 30% to 31.3% (Article 4, Section 2.1.1.E.6.a)

As per plan submitted proposing construction of an addition to a single family residence in the R-1 (Low Density Residential) District.

Applicant Bill Andrews was present. Small combination addition/renovation, 1.3% over the coverage area. No impact of aesthetic on surrounding houses.

Sandy Gillespie representing Kingston Pike Sequoyah Hills Association was present in support of the plans.

Member Daniel Odle made a motion to approve. It was seconded by member Don Horton. The Board voted 5-0 to **APPROVE**.

File: 7-K-18-VA

Parcel ID: 069EB01502

Applicant: Houston Smelcer

4th Council District

Address: 2704 Mineral Springs Ave.

Zoning: O-1 (Office, Medical and Related Services) District

Variance Requests:

Reduce the number of required parking spaces from 60 to 45 spaces (Article 5, Section 7.D.1.Table1)

As per plan submitted for a new multi-family structure in the O-1 (Office, Medical and Related Services) District.

Applicant representative Mark Allen was present. Plan to provide fifty elderly low-income dwelling units within an existing building, utilizing existing parking. Applicant found zoning ordinance doesn't provide parking regulations that capture the type of population in this type of housing. Plan to remove existing parking in the back to build new part of the building and utilize the 41 spaces to the lower side for that parking.

Neighbor Matthew Higdon was present to speak in opposition. Mr. Higdon stated there was nothing physically odd about the property. The zoning ordinance requires exceptional irregularities in the physical conditions and variance requires that it be in the public interest and consistent with the city's land plans. The hardship defined on the application was that the lot was too small. Mr. Higdon stated the applicant proposal would create the hardship. Parking lot proposed to use on lower side left side would not be sizeable enough to allow use of other parking lot for 3 story building. Mr. Higdon asserted that the applicant is proposing something that is too large for the street. Inconsistencies with city sector plan which defines high density as above 25 units per acre, this unit is 27. Sector plan specifies low density character in the adjoining neighborhood should be retained. Applicant did not make mention of employee

parking which was not a part of the calculation. Mr. Higdon submitted photographs to document potential impacts of over-flow parking showing the narrow local road with a lack of sidewalk and transit which would both be important for residents in a high density development.

Neighbor Allen Smith was present to speak in opposition. Mr. Smith stated the applicant's drawings appeared to be out of scale, there may be a discrepancy regarding the property line which involves Mr. Smith's driveway and verbal easement agreement that was made in the past between Mr. Smith and the property owners. Mr. Smith suggested a postponement to provide more time for discussions with applicant.

Neighbor Daniel Johnson was present to speak in opposition. Mr. Johnson stated the street in question was a very narrow dead-end with approximately 25 residents. Adding 50 additional residents would increase population by 200% and would not be appropriate for the street.

Applicant representative Mark Allen made a rebuttal stating the existing parking for the current office building was 80 parking spaces so referenced trip count would be down. Survey of would be future residents showed four of them would have cars.

Director of Community Development for the City of Knoxville, Becky Wayne was present. Ms. Wayne stated the project would be supported with some city funding. The City has a need for affordable housing. The proposed units would house frail elderly, most of which would not have cars and the parking that would be required for most apartment dwellers is not required for this type of housing.

Applicant representative Arthur Seymour was present. Mr. Seymour stated the use is permitted as a use on review by the city zoning ordinance. The parking reduction would be necessitated by the limited acreage on the site with the new building.

Member Don Horton asked if the property was served by a bus line.

Applicant representative Houston Smelcer was present and stated the current KAT bus line is approximately 3 blocks away below Northgate Terrace which is the street over from Whittle Springs. The type of housing that would be provided would have 2-3 case managers and staff onsite at any given time to help with transportation.

Member Kristin Grove asked Mr. Smelcer to speak to Mr. Smith's concern regarding the driveway property easement. Mr. Smelcer advised a third party survey was conducted. Mr. Seymour prepared a written use agreement for Mr. Smith to continue to use the applicant's property for his driveway with the right to retain the right to cancel the agreement in the future.

Mrs. Linda Smith was present and spoke in opposition to the written agreement that was provided by the applicant. Agreement stated the applicant reserved the right to remove the driveway at any given time and would not be held liability for any damage.

Member Don Horton asked for clarification on the facility type. Mr. Smelcer advised it is not a licensed assisted care facility. It is an independent multi-housing facility where residents must be low income seniors and each resident would have their own kitchen.

Member David Dupree stated this would be a reasonable use within the City's guidelines in that there is a strong need within the city for low-income elderly housing and this would constitute a reasonable use of the property and that would constitute a hardship.

Member Don Horton asked if the building needed to be 3-story. Mr. Seymour advised that would be discussed with the MPC as part of the use on review.

Member Kristin Grove asked Mr. Smelcer if he would be willing to postpone the request for one month and try to work with the resident's concerns. Mr. Smelcer advised they would not want to postpone.

Member David Dupree made a motion to approve. The motion was not seconded and therefore the motion died. Member Daniel Odle advised he did not see sufficient proof of hardship. Member Charlie Van Beke made a motion to deny. It was seconded by member Don Horton. Mr. Seymour offered to provide a mini brief on the issue of hardship. Member Kristin Grove and member Daniel Odle suggested Mr. Seymour postpone so that a mini brief could be submitted at the August meeting. Mr. Seymour requested a postponement. Member Charlie Van Beke withdrew the motion to deny. Member Daniel Odle made a motion to postpone to the August meeting. It was seconded by member David Dupree. The Board voted 5-0 to **POSTPONE**.

File: 7-L-18-VA
Applicant: Mark A. Bialik
Address: 4924 N. Broadway
Zoning: C-3 (General Commercial) District

Parcel ID: 058LJ034
4th Council District

Variance Requests:

- 1) Reduce the minimum set back of a parking lot from the right-of-way on North Broadway from 10 feet to 6.28 feet (Article V, Section 7.C.3)
- 2) Reduce the width of a perimeter screening area between a parking lot and right-of-way line on N Broadway from 10 feet to 6.28 feet (Article V, Section 7.J.2.c.2)
- 3) Reduce the minimum setback of a parking lot from the right-of-way on Rennoc Rd from 25 feet to 16.15 feet (Article V, Section 7.C.2)
- 4) Reduce the width of a perimeter screening area between a parking lot and a mixed use or non-residential zone from 5 feet to 2.5 feet (Article V, Section 7.J.2.c.3)
- 5) Reduce the minimum area of a terminal island from 120sq ft to 42.3sq ft (Article V, Section 7.G.5.d)
- 6) Reduce the minimum area of a terminal island from 120sq ft to 0 sq ft for the one terminal island to the left of the area marked "LOADDOCK" (Article V, Section 7.G.5.d)
- 7) Increase the maximum curb cut for the driveway on Rennoc Rd from 60ft to 85.22 ft (Article V, Section 7.H.3.c. Table 7)
- 8) Increase the maximum driveway width for the driveway on Rennoc Rd from 30ft to 50.51 ft (Article V, Section 7.H.3.c. Table 7)
- 9) Reduce the minimum parking space depth to an interlock from 17.5ft to 16.83 ft for 11 spaces (Article V, Section 7.E.1.d. Table 3)
- 10) Reduce the minimum parking space depth to an interlock from 17.5ft to 17.02 ft for 12 spaces (Article V, Section 7.E.1.d. Table 3)

- 11) Reduce the minimum parking space depth to a wall from 17.5 ft to 16.64 ft for 14 spaces (Article V, Section 7.E.1.d. Table 3)
- 12) Reduce the minimum parking space depth to a curb from 15.5 ft to 14.44 ft for 9 spaces (Article V, Section 7.E.1.d. Table 3)

As per plan submitted proposing the demolition of a portion of a shopping center and the construction of a new building in the C-3 (General Commercial) District.

Applicant Mark Bialik was present and advised 90% of variances were existing conditions or were created by having to give up right-of-way along Broadway and Rennoc in the back. Member Kristin Grove confirmed variances 3, 4 and 5 were new requests and all others were related to an existing condition. Member Daniel Odle suggested running through existing conditions on a map to confirm understanding. The Board invited applicant to approach the desk to review plans.

Existing conditions began with variance #1 which was an existing parking space. Hardship was created by having to give up 10ft of right away to get to the proper right of way for Broadway to meet the major road plans. Variance #2 was paired with #1 where one variance was setting it back; the other was landscaping perimeter screening. Variances #6 - #12 were reviewed by board and confirmed existing conditions.

Variance #3 was driven by the giving up of right away on Rennoc. Variances #4 and #5 were driven by neighboring bank requirements to accommodate bank customers. Member David Dupree asked for clarification of hardship for new variance requests. Member Kristin Grove clarified that hardship was due to the giving up property for right of way.

Member Daniel Odle summarized the hardship justifications as the exiting use of the property, existing traffic patterns, the loss of property and overall shape of property. Member Daniel Odle made a motion to approve. It was seconded by member Charlie Van Beke. The Board voted 4-0 to approve, member David Dupree opposed. The motion was **APPROVED**.

OTHER BUSINESS

The next BZA meeting is August 16, 2018.

ADJOURNMENT

The meeting adjourned at 5:41pm.